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ASPECTS OF THE LAW OF THE EUROPEAN ECONOMIC COMMUNITY*

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I THE ECONOMIC LAW OF THE COMMON MARKET

A. ESTABLISHMENT OF THE EUROPEAN ECONOMIC COMMUNITY

In 1955 at Messina, Italy, the foreign ministers of six West European countries¹ resolved “to pursue the establishment of a united Europe through the development of common institutions, a progressive fusion of national economies, the creation of a common market and the harmonisation of social policies.”² They did so against the background of the political and economic effects of the second World War, and of the efforts made, notably the assistance of the United States of America through the Marshall Plan and the Organisation for

* This article was adapted from the Irvine Lectures, which were given at the Cornell Law School on September 6-7, 1984.

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1. France, the Federal Republic of Germany, Italy, Belgium, the Netherlands, and Luxembourg. In 1973 the EEC was enlarged to include Denmark, Ireland, and the United Kingdom. In 1981 Greece became a member, and in June 1985 a treaty admitting Spain and Portugal was signed. The treaty must be ratified by all twelve countries by January 1, 1986.

2. LORETTE, *LE MARCHÉ COMMUN* 60 (1961).

European Economic Co-operation, to put Europe back into physical and economic shape. They did so more specifically in the light of the experience of three of their members (Belgium, The Netherlands, and Luxembourg) in creating an economic union by means of an internal market, in which barriers to the movement of goods, capital, and workers were set aside, and the experience of all six of them in the European Coal and Steel Community, which had been set up in 1952.³ That Community was born out of the idea that century-old conflicts between France and Germany over the industrial areas that skirt their frontiers might be avoided if a supra-national body could be founded on a common market, common objectives, and common institutions. Such a body would seek to rationalise the production and distribution of coal and steel in order to encourage expansion, promote free competition, and take care of the interests of the worker and the consumer. The European Coal and Steel Community, at least in its early days, had shown that a supra-national agency could work amongst European states and could increase economic progress.

Carried forward by the vision and realism of great men such as Schuman and Monnet, the original members set out in the Treaty of Rome in 1957 to create a union among the nations of Europe.⁴ The union would not be limited to specific industries, but would be concerned with regulating the economic activities of those nations in the interests of economic and social progress and of preserving and strengthening peace and liberty. At the same time, the members created a third Community, the European Atomic Energy Community, in order to further the development of a powerful nuclear industry that would provide energy, modernise resources, and promote peace and prosperity among the peoples of Europe.⁵

The preambles to the three Treaties that established these Communities show that their aims were partly political, but the Treaties do not in fact go very far toward political union. They do not create a federation in the sense in which you understand it in the United States of America, although there are many, including a majority of the members of the Parliament of the Communities, who feel strongly that a closer form of union should be realised.

The aims were predominantly economic. With ten Member States, and a population that, when Spain and Portugal enter the Communities, will exceed 300 million people, the Common Market is

3. Treaty Establishing the European Coal and Steel Community, *done* Apr. 18, 1951, 26 U.N.T.S. 140 [hereinafter cited as E.C.S.C. Treaty].

4. Treaty Establishing the European Economic Community, *done* Mar. 25, 1957, 298 U.N.T.S. 3 [hereinafter cited as EEC Treaty].

5. Treaty Establishing the European Atomic Energy Community, *done* Mar. 25, 1957, 28 U.N.T.S. 259.

clearly an economic unit that cannot wholly be ignored by businessmen and their lawyers in other parts of the world.

With ten countries, each having different legal systems and historical traditions, there were bound to be difficulties, even in times of prosperity, in merging into one Community. In times of serious recession those difficulties are more acute. Forming a united Community might have been easy if the Member States could have begun by abolishing all legal rules, all frontiers, and all restrictive practices, and if they could have started with the assumption of one unified area, one legal system, and one parliament. To persuade ten Member States to give way on a wide variety of topics in the interests of the Communities' objectives is not always easy, and at times the pace of the policy makers has been slow, due largely to the protection of national interests. The role of the European Court of Justice has been critical, not merely in ensuring that the policymakers, the executive Institutions, and the Member States observe the rules of the Community, but also in interpreting the law in such a way as to give effect to the fundamental and overriding objectives of the Community. This role is particularly difficult and sensitive in a time of economic crisis.

This first lecture will describe some of the legal principles embodied in the treaties and will discuss how the Court of Justice of the three Communities has defined and developed those principles to achieve the economic aims set out in the Treaties.

B. THE ORGANIZATIONAL STRUCTURE OF THE EEC

Article 2 of the Treaty of Rome gave the Economic Community the task of "establishing a common market and progressively approximating the economic policies of the Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it."⁶

1. *Policy-Making and Legislative Bodies*

In some areas, in what are called "the foundations of the Community," precise powers were vested in the Institutions of the Community and obligations imposed upon them. In these areas, the Member States have substantially surrendered their own powers in the interests of the Community as a whole. For example, the customs union that was established⁷ goes far beyond the previous agreements for a free trade area among some of the Member States. Specific and

6. EEC Treaty, art. 2.

7. EEC Treaty, art. 9-11.

precise provisions deal with the free movement of goods, of employed and self-employed persons, and of businesses. The Common Market was declared to extend to agriculture,⁸ and Member States were obliged to establish a common agricultural policy with the aims of rationalising and increasing productivity, stabilising markets, assuring supplies at reasonable prices, and providing a fair standard of living for the agricultural community.

These "foundations" were accompanied by what in the Treaty is called the "policy of the Community"⁹—the provisions of the Treaty that impose precise obligations. For example, the Treaty laid down rules for the Community to administer in curbing restrictions on competition and in restraining the aid that a Member State may provide to its own industries.¹⁰ Moreover, the Council, which is the Community's policy making and legislative body, has power to issue directives to Member States obliging them to bring into line their national laws and practices that directly affect the functioning of the Common Market. Power over the Common Market's external commercial policy was taken away from the Member States and vested in the Community. On the other hand, in other areas, such as internal economic and monetary policy, the Treaty's requirement of consultation and cooperation is little more than exhortatory.

2. *The Role of the European Court of Justice*

The European Court of Justice (ECJ) plays a vital role in promoting Community objectives. Its overriding task is to ensure that in the interpretation and application of the Treaty the law is observed. For this purpose, since it has no inherent powers or jurisdiction other than those conferred by the Treaties, it has been given certain tools. The Court can rule whether a Member State has properly carried out its obligations under the Treaty, for example by implementing Directives to harmonise laws throughout the Community, or by permitting the free movement of goods into or out of its territory.¹¹ The Court can also declare whether the Council and the Commission (the executive) have violated the Treaty, or exceeded their powers, or failed to act when the Treaty obliged them to act.¹² Finally, the Court can answer questions put to it by national courts that face issues of Community law in litigation before them.¹³

8. EEC Treaty, art. 38-47.

9. EEC Treaty, Part III.

10. EEC Treaty, art. 85-94.

11. EEC Treaty, art. 171.

12. EEC Treaty, art. 173, 175.

13. EEC Treaty, art. 177.

C. JUDICIAL PRINCIPLES THAT PROMOTE THE ECONOMIC AIMS OF THE TREATY

Economic law questions, whether involving intervention by legislation or the maintenance of a properly functioning common market with undistorted competition, have provided the Court with the majority of its cases. Particularly numerous are cases referred by national courts that involve the common agricultural policy and the free movement of goods.

The Court has striven to avoid legislating through the vehicle of judicial process. At the same time, it has striven to uphold the objectives of the Treaty, which have to be applied in the light of changing economic circumstances. This task sometimes makes it necessary to avoid construing the words of the Treaty as they would have literally been construed at the time the Treaty was signed.

In the operation of the common agricultural policy, politically controversial as it is, considerable steps have been taken, even if progress is uneven. For example, Community market organisations have been set up to control prices, quality, and systems of distribution of a number of products such as cereals and milk and their derivatives. In these areas, the Court has largely been concerned with the interpretation and effect of the measures taken, with their validity in the light of the Treaty provisions, and with the division of responsibilities between the Community and the Member States. These questions come from the national courts in most cases, because the policy is administered largely by agricultural intervention agencies on behalf of the Community. For example, if a levy is claimed from or resisted by a trader in proceedings in a national court, the validity of the levy and of the legislation itself might raise a question of Community law that the ECJ could or would ultimately decide. In cases involving agricultural products for which Common Market organisations have not been set up, the Court has not merely given a literal interpretation of the legislation. The Court also has laid down general principles that are not spelled out in the Treaty, but are derived from the traditions followed in the Member States, such as proportionality and nondiscrimination.¹⁴

1. *The Requirement of Proportionality*

One general principle that the Court insists must be satisfied in subordinate legislation of the Communities is proportionality. Obligations imposed on traders must not be disproportionately burdensome

14. These cases illustrate the Court's teleological approach to interpretation, which certainly differs from the traditional, if not always contemporary, approach of the English courts.

in relation to the legitimate object to be achieved by the legislation. In one case, the Commission found itself, as a result of the overproduction of milk, with large stocks of skimmed milk powder into which the surplus milk had been converted.¹⁵ This could be used for feeding animals, particularly calves and pigs. A rival feed product of vegetable origin received an aid that effectively reduced the price. To get rid of the skimmed milk powder, the Commission provided that the aid for the vegetable product would only be paid if specified quantities of skimmed milk powder were bought at a price three times the normal price. The Court, whilst recognising that the surplus skimmed milk powder existed only as a result of the common market in agriculture and that it had to be disposed of, nonetheless found that the method adopted was unreasonably onerous to the purchaser, and held the legislation invalid.

Similarly, in another case, traders who were required to pay a deposit in order to import tomato concentrates were refused the return of their deposit because they had failed to present proof that the goods had been imported within the time specified.¹⁶ The Court had no difficulty in holding that the failure to provide proof was ancillary to the main obligation, which was to import the goods within a defined period. Therefore, the Court held that the refusal to return the deposit, whilst authorised by the words of the legislation, was disproportionate. The position would have been different, however, if producing the proof had been the primary rather than the ancillary obligation.

2. The Requirements of Nondiscrimination

In the same vein, the Court has held that there exists in Community law a general principle of nondiscrimination. Article 40(3) of the Treaty, which excludes from Common Market organisations "any discrimination between producers or consumers within the Community," is merely a facet of this principle.

For example, between 1964 and 1974, under the common organisation of the market in cereals, producers of starch and quellmehl received a refund according to the quantities produced. The production refund was then abolished for quellmehl but retained for starch with the obvious intention, as a matter of policy, of furthering starch production. In the preamble to the regulations that had first provided for the refund, the two products were declared interchangeable. The Court ruled that to take away the refund for one but not the other was

15. Case 114/76 *Bela Mühle Josef Bergman KG v. Grows-Farm GmbH & Co. KG*, 1977 E.C.R. 1211, 25 Comm. Mkt. L. R. 83 (1979).

16. Case 122/78 *Buitoni v. Fonds D'Orientation et de Regularisation des Marches Agricoles*, 1979 E.C.R. 677, 25 Comm. Mkt. L. R. 665 (1979).

discriminatory and unlawful.¹⁷ In a similar way the Court has protected producers and traders against intervention, in the interests of the policy of the Commission, where the result was to take away rights or to frustrate legitimate expectations of a continuing legal situation on the basis of which producers had made their commitments. Sudden changes in the law that would have deprived them of anticipated advantages have been held to be unlawful. The Court must uphold policies that are adopted as part of the organisation of the market in agricultural products, and it does not trespass on administrative discretion or appraisal.¹⁸ However, the Court is astute in protecting the trader from arbitrary or unjustifiable exercises of power.

The sensitivity of the Court to what it sees as the true interests of the Community and of the individual is well illustrated by a case involving the United Kingdom that at the time caused something of a stir.¹⁹ Fish are included as agricultural products. The United Kingdom has a great economic interest in establishing and protecting catchment areas for fish, as do other coastal states. The adoption of a common fisheries policy had been determined to be a Community responsibility, so the Community had exclusive power to legislate. However, the Member States had found it impossible to agree, largely because of nationalism and protectionism. The United Kingdom grew tired of waiting and adopted its own measures in 1979. These were held to be unlawful on two grounds. First, the Court held that the United Kingdom could not go it alone in respect of something falling within the ambit of Community affairs even if the Member States had not agreed on a Community policy. A Member State must regard itself as a trustee of Community interests and act only after consultation with and agreement by the Commission. The Court also held that the measures adopted were bad in that the grant of licenses was so discretionary that applicants could not know what their rights were with sufficient certainty.

There are many who think that intervention and harmonisation of laws need to be increased rather than slowed.

17. Cases 117/76 and 16/77 *Firma Albert Ruckdeschel & Co. v. Hauptzollamt Hamburg-St Annen*, 1977 E.C.R. 1753, 25 Comm. Mkt. L. R. 445 (1979).

18. It is largely in the area of the agricultural policy that the Community court has been concerned with fluctuations in exchange rates. Clearly, fluctuations in exchange rates, in a market that aims at uniform prices, can cause disturbances in trade. The Court has recognized that payments may have to be made by exporters or importers if national currencies fluctuate beyond a certain amount and that the Commission and Council must have a large discretion as to when, how, and in what areas adjustments are made by monetary compensatory amounts. The Court has, however, insisted that such amounts be no more than what is necessary to cancel out the effects of such fluctuations in a system of floating currencies.

19. Case 804/79 *Commission v. United Kingdom*, 1981 E.C.R. 1045, 33 Comm. Mkt. L. R. 543 (1982).

D. THE EEC AS AN INTERNAL MARKET

An important facet of the Common Market's existence is the goal of undistorted competition within the Community. The Court has expressed this goal aptly:

The concept of a common market as defined by the Court in a consistent line of decisions involves the elimination of all obstacles to intra-Community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market. It is important that not only commerce as such but also private persons who happen to be conducting an economic transaction across national frontiers should be able to enjoy the benefits of that market.²⁰

The internal market depends on the proper application of the four freedoms that lie at the heart of the Treaty of Rome: free movement of goods; free movement of persons for employment, including the rights of establishment for commercial and industrial purposes; freedom to provide services; and free movement of capital.²¹ The internal market also depends on correlative rules that are linked to the four basic freedoms.²²

1. *The Free Movement of Goods*

The freedoms listed above cannot be kept in totally separate compartments. However, the freedom of movement of goods²³ stands out as the most important of the four.²⁴ It is linked with the institution of a customs union,²⁵ and it is the cornerstone of the Common Market. This is the area in which real money is at stake, in which trade hackles most readily rise, and in which national economic interests begin to feel that they are at risk. The importance of the free movement of goods is illustrated by the fact that movement of goods comes first in

20. Case 15/81 *Gaston Schul v. Inspectuer der Invoerrechten en Accijnzen*, 1982 E.C.R. 1409, 35 Comm. Mkt. L. R. 229 (1982).

21. EEC Treaty, arts. 48-73.

22. These include rules concerning competition and state aid, the prohibition of discriminatory internal taxation, and liberalization of current payments.

23. Although the word "goods" is not defined by the Treaty, the Court has construed it broadly as meaning products that can be valued in money and that are capable of forming the subject matter of commercial transactions. See Case 7/68 *Commission v. Italy*, 1968 E.C.R. 423.

24. Free movement of goods within the Community raises different issues from those concerning the entry of goods into the Community.

Even though the customs union is not complete, the Member States have common rules for tariffs on imports into the Community from third countries. They also strive towards a common external commercial policy.

The freedom of movement of goods also affects goods originating outside the Community. Goods from third countries that have been cleared through customs, and for which duties have been paid, are assimilated to Community goods and are regarded as being in free circulation in the Community.

25. In this respect the nationality or place of residence of the owner or importer or exporter is not a relevant consideration. What matters is that the goods are in free circulation in the Community, not whether the traders are European nationals.

the Treaty and by the fact that the Court has already had to consider over four-hundred cases in this area.

a. The prohibition of customs duties and charges having equivalent effect

The free movement of goods is achieved primarily by the prohibition of customs duties between Member States.²⁶ Customs duties are fiscal duties that must be paid solely because the goods cross a frontier. They have long since ceased to exist between Member States. However, "charges of equivalent effect" to customs duties are also prohibited, both on imports and exports. The term "charges of equivalent effect" is most controversial.

The Court tackled the problem in an early case that concerned a charge imposed by Belgian law on diamond imports.²⁷ The charge was small, one-third percent of the value of goods that did not compete with domestic products. The money collected went not to the State but to a social fund for diamond workers. But, the Court found that it was a charge of equivalent effect to a customs duty and accordingly was prohibited. The Court gave the following definition, which has subsequently been followed:

Any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect . . . even if it is not imposed for the benefit of the State, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product.²⁸

This wide definition of the prohibition shows the Court's commitment to creating a common internal Community market.

The Court has frequently had to examine charges imposed at the frontier. If such a charge is made in the interests of the state, generally it is a charge of equivalent effect. However, if the charge is imposed on behalf of the Community, it is not a charge of equivalent effect. For example, charges that are made for the purposes of drawing up import and export statistics, or for examining fruits, plants, meat, or animals to ensure that goods crossing the frontier meet health standards, are generally unlawful. On the other hand, charges that are imposed at the frontier in return for services provided to importers or exporters and that are for their benefit in getting the goods to their destination have to be distinguished. These charges are permissible, so

26. EEC Treaty, art. 12.

27. Cases 2/69 and 3/69 *Sociaal Fonds Voor De Diamantarbeiders*, *Antwerp v. S.A. Ch. Brachfeld & Sons*, 1969 E.C.R. 211, 8 Comm. Mkt. L. R. 335 (1969).

28. *Id.*

long as they are proportionate to the cost to the state of providing the service.

The line between permissible and impermissible charges is not always easy to draw. In a recent case, a distinguished bibliophile in the Netherlands ordered books from other Member States.²⁹ The Post Office in his country charged him a fee for clearing the goods through customs. He challenged it in his national courts. On a reference to the European Court by the national court, the Post Office argued that the fee was merely a consideration for its work in clearing the books through customs. The Court held that if he was presented with a fait accompli, the charge was prohibited. But if he had the option to clear the books himself, the charge, if commensurate with the cost, was a permissible fee for services rendered.

b. The prohibition of internal taxation having discriminatory effect

The Treaty's prohibition of taxation that discriminates against imports³⁰ also causes problems of interpretation. In applying the prohibition, it is necessary to decide whether the charge is equivalent to a customs duty or whether it is internal taxation. If it is the latter and does not discriminate against imports, it will generally be permissible. This distinction again raises difficult questions the answers to which, I suspect, have not finally been worked out. However, the Court has given guidance. A charge on imports is not usually regarded as internal taxation unless it is imposed according to the same criteria and at the same stage of marketing as charges imposed on domestic products. The chargeable event must also be the same for both products. For example, France imposed an internal tax on the slaughtering of cattle. A charge in the same amount was imposed on cattle from other Member States at the time of importation. Because the charge was imposed in respect of different events, the European Court held it to be equivalent to a customs duty, and the importer did not have to pay.³¹

The question is particularly acute if the country of importation makes virtually none of the goods sought to be imported. The Court has held, contrary to the views of the Commission, that even if only one percent of the goods on which the charge is imposed are domestic, it is still a form of internal taxation and not a charge equivalent to a customs duty, and thus valid so long as it is not discriminatory.³² The

29. Case 39/82 *Donner v. Netherlands*, 1983 E.C.R. 19, 36 Comm. Mkt. L. R. 711 (1983).

30. EEC Treaty, art. 95.

31. Case 132/78 *Denkavit Loire v. France*, 1979 E.C.R. 1923, 26 Comm. Mkt. L. R. 605 (1979).

32. Case 90/79 *Commission v. France*, 1981 E.C.R. 283, 32 Comm. Mkt. L. R. 1 (1981).

question arises whether the same can be true if a tax is imposed on all goods of a particular kind, even if none of the goods is produced or manufactured in the country imposing the taxation.

In a recent case, the Danish Government contended that a charge for sanitary checks on peanuts was an internal tax.³³ The checks were part of a general system of health controls carried out by local authorities. There was no doubt that the charge for the checks was a form of valid internal taxation. In addition, however, the Government had power to make special decrees covering specific foodstuffs. It had made only two such decrees, for Brazil nuts and for peanuts. Neither of these products is produced in Denmark. The European Court decided that the decrees covered special goods and were too limited to be a part of a general system of internal taxation. The Court held that a charge may be equivalent to a customs duty even where there is no domestic product with which the imports compete.

The taxation provisions complement the rule that goods should move within the Community without customs duties. Member States are prohibited from imposing internal taxation on the products of other Member States that exceeds taxation of similar domestic products. Member States are also prohibited from imposing internal taxation on the products of other Member States so as to afford indirect protection to other products.³⁴ The limitations on taxation have a wider effect than at first might appear. They are not limited to a situation in which different rates of tax are applied, but cover situations in which the way in which tax is assessed favours domestic products. For example, one country allowed domestic producers to defer payment of a tax on beer and spirits. The Court held the deferment invalid because it was not given to the importers of beer and spirits. The importer was therefore at a disadvantage.³⁵

A case that involved particularly difficult economic and technical questions of this sort concerned the United Kingdom. It was contended that the tax on a litre of wine, largely an imported product, was five times that on beer, largely a domestic local product.³⁶ The United Kingdom contended that the two were not in competition because they are different products serving different social purposes and needs.

33. Case 158/82 *Commission v. Denmark*, 1983 E.C.R. 3573, 41 *Comm. Mkt. L. R.* 658 (1984).

34. EEC Treaty, art. 95.

35. Case 55/79 *Commission v. Ireland*, 1980 E.C.R. 481, 27 *Comm. Mkt. L. R.* 734 (1980).

36. Case 170/78 *Commission v. United Kingdom*, 1980 E.C.R. 417, 27 *Comm. Mkt. L. R.* 716 (1980). A parallel problem arose in relation to a tax imposed by the Italian government on imported cognac and whiskey as opposed to that which applied to domestic grappa. See Case 319/81 *Commission v. Italian Republic*, 1983 E.C.R. 601, 37 *Comm. Mkt. L. R.* 517 (1983).

Thirty years ago that argument might have had more chance of success, but it was difficult to maintain in the light of the current increase in wine consumption not just with meals, but also at parties and in public houses. The Court on a first look at the case thought that it was possible that the difference in tax could afford protection to beer. A major problem, however, was the difference in the alcohol content between wine and beer. A secondary problem was the price differential between the two products. Following its practice of avoiding condemning a Member State if a compromise can be reached in a sensitive area—and the respective merits of beer and wine are a very sensitive area—the Court sent the Government of the United Kingdom and the Commission away to seek a compromise and in particular to address the issue of alcohol content. When no agreement could be reached, the Court ruled that cheaper table wines were in competition with beer and that the tax on those wines was invalid. As a result, the United Kingdom had to review its tax system to comply with the Court's judgment. Loyal to the Anglo-Saxon spirit of compromise, instead of reducing the tax on wine to the level appropriate to beer, the United Kingdom increased the tax on beer and reduced the tax on wine so that the two were approximately equal. In such a way are national traditions broken and the drinking habits of individuals affected in the Community.

These cases frequently deal with categories of goods rather than, as happens in ordinary litigation, single transactions. Sometimes, however, a single transaction challenged in the courts can lead to far-ranging results under Community law. For example, in one case Germany imposed a four-percent turnover-equalization tax on powdered milk that was imported from Luxembourg to Germany but was not subject to tax in Germany.³⁷ The national court referred the case to the European Court, which held the tax unlawful. As a result of the decision, 300,000 complaints were received for improperly charged taxes, and 25,000 actions for recovery of the tax were commenced before the German courts.

C. PROHIBITION OF QUANTITATIVE RESTRICTIONS AND MEASURES HAVING EQUIVALENT EFFECT

A State can restrict the free movement of goods in yet another way, by controlling the quantities of goods that traders import or export. Such a control can clearly amount to a negation of the concept of a free single market. The Treaties therefore prohibit "quantita-

37. Case 57/65 *Lütticke v. Hauptzollamt Sarrelouis*, 1966 E.C.R. 205, 10 Comm. Mkt. L. R. 674 (1971).

tive restrictions" on imports and exports.³⁸ This provision is not very difficult to apply. But it is not enough to legislate for the obvious restriction. States can adopt measures that, whilst not expressly limiting quantities, can indirectly have that effect. Therefore, "measures of equivalent effect to quantitative restrictions on imports" are ruled out.³⁹ This prohibition, however, is not absolute. Some restrictions may be necessary when public security or order, or human, animal, or plant health and life are at risk. Member States have the burden of showing that restrictions on imports or exports are justified on these grounds and are not a means of arbitrary discrimination or a disguised restriction on trade.⁴⁰

Cases involving quantitative restrictions have raised questions of considerable economic, indeed almost political, importance and difficulty. Governments are inevitably under pressure from trade interests to protect national products and industries. The Court has pursued a firm and largely consistent line in these cases. The Court construes measures of equivalent effect widely, particularly those that restrict imports. Such restrictions must by and large be struck down. "[A]ll trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade, are equivalent to quantitative restrictions."⁴¹ Restrictions that fall under other treaty provisions, such as fiscal provisions, are dealt with separately from quantitative restrictions.⁴²

Measures of equivalent effect may be invalid even if their effect on imports is potential rather than actual or if they merely restrict imports, rather than discriminate against imports in favour of domestic products. A classic example can be found in the case in which the Court struck down a German law that required that certain liqueurs, no matter where they originated, not have less than a specified alcohol content.⁴³ German liqueurs had that level. *Cassis de Dijon*, which is made in France, did not. The Court held that the exclusion was a breach of the Treaty because a product freely marketable in France could not be sold in Germany.⁴⁴ The Court, however, recognized that

38. EEC Treaty, art. 30.

39. *Id.*

40. EEC Treaty, art. 36.

41. Case 8/74 *Procureur du Roi v. Renoit and Dassonville*, 1974 E.C.R. 837, 14 Comm. Mkt. L. R. 436 (1974).

42. See, e.g., Case 74/76 *Iannelli v. Meroni*, 1977 E.C.R. 557, 20 Comm. Mkt. L. R. 688 (1977).

43. Case 120/78 *Rewe-Zentral v. Bundesmonopolverwaltung*, 1979 E.C.R. 649, 26 Comm. Mkt. L. R. 494 (1979).

44. A recent case shows the converse. Germany prohibited the importation of wine-based drinks unless they conformed to the law of the state of manufacture. Italian law required a 16% alcohol content in vermouth but allowed exports with a lower alcohol content. The German rule, therefore, prohibited the importation of this product because it

obstacles to trade must be accepted insofar as they are necessary for fiscal supervision, protection of public health, fair trading, and consumer protection. However, the Court insisted that the laws of importing Member States must not restrict imports if the laws' purposes are sufficiently safeguarded by regulations already adopted in the exporting States. Member States must cooperate to remove restrictions, giving due weight in their standards to rules already enforced in the Member States from which the goods come. Furthermore, it is crucial for national courts and the European Court to consider continually whether the ever-proliferating range of domestic regulations impinges on the Community's essential need for the free movement of goods.

The Court's decisions invalidating a wide range of restrictions⁴⁵ have created problems. At times, the problems have become so acute that there is common talk of "wars." We have had the "wine war" between France and Italy following the French efforts to keep vast quantities of Italian wine off the French market,⁴⁶ a "turkey war," when the United Kingdom, in breach of the Treaty, changed its policy concerning measures that it thought should be obligatory in other countries if a particular poultry disease occurred,⁴⁷ and a "lamb war,"

did not achieve the alcohol content fixed for the nationally-consumed product. The Court held that this was a discriminatory provision and that it was perfectly possible to avoid confusion, or the deception of the customer, by adequate labelling of the product to indicate the alcohol content. *See* Case 59/82 *Schutzverband v. Weinvertriebs GmbH*, 1983 E.C.R. 1217, 39 Comm. Mkt. L. R. 319 (1984).

45. For example, the Court has invalidated limitations on the age of buses admitted into Italy, *see, e.g.*, Case 50/83 *Commission v. Italy* (Mar. 27, 1984); limitations on packaging, *see, e.g.*, Case 16/83 *Prantl* (Mar. 13, 1984) (German law that prohibited use of a bottle of a particular shape for anything other than wine from a certain region); Case 261/81 *Cebensmittelwerke v. De Smedt Pub A*, 1982 E.C.R. 3961, 37 Comm. Mkt. L. R. 496 (1983) (invalidating limitations on packaging of margarine sold in Belgium); and a "buy Irish" campaign, *see* Case 249/81 *Commission v. Ireland*, 1982 E.C.R. 4005, 37 Comm. Mkt. L. R. 104 (1983) (Court found that Government's intention was to check flow of imports from Member States, even though no binding rules had been made). *See also* Case 124/81 *Commission v. United Kingdom*, 1983 E.C.R. 203, 37 Comm. Mkt. L. R. (1983) (invalidating requirement that imported heat-treated milk be tested even if tests had been done in the exporting Member State); Case 193/80 *Commission v. Italy*, 1981 E.C.R. 3019 (invalidating limitations on what could be called "vinegar").

However, the Court has stated that certain measures to improve a domestic industry can be lawful. *See, e.g.*, Case 222/82 *Apple & Pear Dev. Council v. Lewis*, 1983 E.C.R. 4083, 41 Comm. Mkt. L. R. 733 (1984) (campaign to promote particular varieties of apples would be lawful, but campaign to promote domestic apples would not); Case 237/82 *Jongeneel Haas v. Netherlands* (Feb. 7, 1984) (limitations to encourage improvement of quality of domestic products, such as Dutch cheese, lawful if there is no discrimination against imports).

46. The situation resulted from a surplus production of Italian wine that led France to impose unjustified sampling, documentary queries, and delays. The Court held that these practices violated the Treaty. Case 42/82 *Commission v. France*, 1983 E.C.R. 1013, 39 Comm. Mkt. L. R. 160 (1984).

47. *See* 40/82 *Commission v. United Kingdom*, 1982 E.C.R. 2793, 35 Comm. Mkt. L. R. 497 (1982).

when France made it virtually impossible for English lamb to enter the French market.⁴⁸

Do not conclude that all is peanuts, margarine, and turkey. Apart from these homely products, major national interests may be at stake. In a case recently decided, the Irish Government, in the interests of maintaining its oil supply, purchased a refinery in Ireland and obliged petroleum companies to buy a percentage of their requirements from it at a higher price than that charged by rival commercial companies.⁴⁹ There was no doubt, despite the Irish Government's arguments, that this was a breach of the prohibition of restrictions on imports. The question, however, was whether Ireland's actions were justified on the grounds of public order or security.

The Court recognized that although the Community and the International Energy Agency had taken measures to procure oil stocks in order to reduce the damage of an oil crisis to Member States, these measures could not ensure an adequate level of stocks. Having a refinery reduced Ireland's vulnerability in the event that other refining companies cut off supplies. Moreover, Ireland could buy crude oil directly from producing countries. This might put Ireland in an advantageous position if crude oil supplies were reduced. The Court held that it was for the national courts to decide whether the Government could require that a percentage of petroleum products be bought from the refinery if the major oil companies refused to buy from it. The Court warned, however, that the Government may not require purchasers to buy more than was necessary to keep the refinery going. The Court, though aware of the dangers of opening a Pandora's box by widening the areas where Member States can invoke public security in economic matters, has realistically accepted the importance of steps that are crucial to modern government. What it has done, as I see it, is to allow a Member State to impose otherwise impermissible import quotas on grounds of protecting a nationalised industry.

So much for goods. The provisions for free movement of capital do not have the same degree of precision or emphasis, important though they are. Member States are required to abolish all restrictions among themselves on the movement of capital belonging to Community residents.⁵⁰ Also, Member States must remove any discrimination based on nationality, residence of the parties, or the place where

48. Case 232/78 *Commission v. French Republic*, 1979 E.C.R. 2729, 27 Comm. Mkt. L. R. 418 (1980). This "lamb war" illustrates the rare occasion when a government apparently deliberately failed for a long time to comply with an order of the Court, other than one simply dealing with the adoption of legislation. See Cases 24 and 97/80R *Commission v. French Republic*, 1980 E.C.R. 1319, 32 Comm. Mkt. L. R. 25 (1981).

49. Case 72/83 *Campus Oil Ltd. v. Ireland* (July 10, 1984).

50. EEC Treaty, art. 67.

their capital is invested.⁵¹

It has to be recognized, however, that capital movements are closely connected with economic and monetary policy, for which the Member States are largely responsible. A complete freedom of movement of capital might well undermine the economic policy of one of the Member States or create an imbalance in its payments and thus impair the proper functioning of the Common Market. Varying degrees of liberalisation have thus been adopted at the present stage of development of the Common Market.

3. *Competition Law*

Brief reference must be made to two sets of rules that seek to prevent distortion of competition. These rules are of great importance in welding together various markets into one common market. In language familiar to American lawyers, the Treaty prohibits the abuse by undertakings of a dominant position within the Common Market⁵² and concerted practices that affect trade and have as their object or effect the restriction or distortion of competition within the Common Market.⁵³ The Commission, which investigates and adjudicates on such agreements and practices, has the authority to impose substantial fines. The Commission is subject to review by the Court. This is an area of immediate concern to the American lawyer whose clients have affiliates or agencies carrying on trade in Europe. In recent cases the Court has been concerned with competition in fields such as computer software,⁵⁴ hi-fi equipment from Japan,⁵⁵ and books sold pursuant to price-fixing agreements between publishers and booksellers.⁵⁶ The Court must consider such questions as: Is a Hasselblad camera part of the same market as a 35mm camera?⁵⁷ Can Ford-Germany stop making right-hand drive cars that British buyers purchase in Germany at a lower cost than are available in Britain?⁵⁸ Is the British American Tobacco Company subject to a fine because of an agreement made with a small Dutch tobacco manufacturer, which says that as a result of the agreement it was effectively prevented from pursuing the expanding German market for tobacco used for hand-rolled ciga-

51. EEC Treaty, art. 68.

52. EEC Treaty, art. 86.

53. EEC Treaty, art. 85.

54. Case 60/81 IBM v. Commission, 1981 E.C.R. 2639, 32 Comm. Mkt. L. R. 635 (1981).

55. Cases 100 to 103/80 SA Musique Diffusion Francaise v. Commission, 1983 E.C.R. 1825, 38 Comm. Mkt. L. R. 1825 (1983).

56. Cases 43/82 and 63/82 De Vereniging der Bevordering van het Vlaamse Boekwezen v. Commission, (Jan. 17, 1984).

57. Case 86/82 Hasselblad Ltd. v. Commission, 39 Comm. Mkt. L. R. 559 (1984).

58. Cases 228/82 and 229/82 Ford of Europe, Inc. v. Commission, 39 Comm. Mkt. L. R. 649 (1984).

rettes?⁵⁹ The elimination of these restrictions is a crucial task in the creation of a true common market.

a. Issues of government subsidies

Increasingly, in a time of recession, states wish to give financial or other aid to industries that are ailing, need reorganisation, or are in financial difficulties, or to regions with heavy unemployment. Such aids, in whatever form, that distort competition and trade among Member States by favouring particular undertakings or the production of certain goods, are incompatible with the Common Market.⁶⁰ These are sensitive areas of great economic difficulty. The Court, whether on the complaint of the Commission under its policing powers or on the complaint of a Member State whose industry is affected by a neighbouring State's aids, must strike a balance. On the one hand, the Court must ensure that the procedural rules laid down by the Treaty are faithfully observed,⁶¹ and on the other, the Court must ensure that the Commission is allowed to exercise its rightful discretion.⁶²

E. COAL AND STEEL TREATY ISSUES

So far I have referred to the Economic Community, because that is where most of the legal questions have arisen. The Coal and Steel Treaty, however, cannot be ignored. It provided the early cases in which many principles were explored and developed. From the end of the fifties to the end of the seventies not very many cases came before the Court. Since then, however, the position has been very different. The steel industry in the United States has had its problems, and the crisis has also been very serious in Europe. To get rid of surplus steel, companies began to sell below the list prices, which they were obliged under the Treaty to publish. This was held unlawful, and they were fined. A rule was made that in certain sectors producers must observe minimum prices. The legality of that rule was challenged on the basis that in particular areas there was no crisis so that price-cutting between dealers still took place. The Court criticised this latter distinction but upheld the adopted system as justified in the light of the

59. Case 35/83 *British American Tobacco v. Commission*, pending.

60. See EEC Treaty, art. 92. This prohibition is subject to precise exceptions set out in the Treaties or to the exercise of the Commission or Council's discretionary powers.

61. See, e.g., Case 84/82 *Germany v. Commission* (Mar. 20, 1984) (The Court set aside the Commission's approval of a scheme devised by the Belgian Government to restructure its textile industry because the Commission had not properly consulted the German Government.).

62. See, e.g., Case 730/79 *Phillip Morris v. Commission*, 1980 E.C.R. 2671, 31 Comm. Mkt. L. R. 321 (1981) (The Court held that the Commission was entitled, in judging whether the standard of living was abnormally and the rate of unemployment seriously high in a particular area, to compare area not only with the Netherlands but also with the Community as a whole.).

existing problem and stressed that in a time of crisis Community solidarity requires sacrifices. As things got worse, the Commission introduced quotas for production and delivery in the Common Market—quotas fixed by reference to earlier periods of production. This too was attacked by sectors of the industry on the basis that the fair way was to fix quotas by reference not to what actually happened in the past, but to current production capacity. That argument was rejected by the Court on the basis that objectively it was a perfectly tenable test for the Commission to adopt, and indeed one that avoided the more difficult exercise of assessing capacity. Moreover, it avoided discrimination between producers in that it applied the same reference period to each, and gave power for adjustments to be made on the application of producers themselves. Finally, an attempt was made to argue that producers in Member States should not be obliged to reduce their production unless the Commission restricted imports from other countries. The Court refused to accept this. Since the Community accepted far more steel than it had imported, the Commission in its discretion was entitled to require that internal production be reduced rather than to seek to persuade non-member countries to reduce their exports.

In the last three years the Court has received a substantial number of these cases. In some, heavy fines have been reduced. But overall, the Court has been obliged to rule that the interventionist measures taken have been justified by the compelling needs of the Community as a whole.

CONCLUSION

In the creation of this Common Market—so much more than a free trade area or a customs union—the economic questions discussed here inevitably loom large. Though economic law may be a relatively new phrase for the conventional lawyer, it has created for judges, practitioners, and universities different, more complex perspectives. It has proved right, as so often events do, the words of Lord Denning in 1974 in relation to the English courts:

The Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back. In future in transactions which cross the frontiers we must no longer speak or think of English law on its own. We must speak and think of Community law, of Community rights and obligations and we must give effect to them. This means a great effort for the lawyers. We have to learn a new system. We must get down to it.⁶³

63. *H.P. Bulmer Ltd. v. J. Bollinger S.A.*, [1974] 1 Ch. 401.

II THE INDIVIDUAL AND THE LAW IN THE EUROPEAN COMMUNITY

Although economic considerations were the primary motivation in the establishment of the Treaty of the European Community,¹ the Treaty was not limited to the development of a common market and the expansion of the economy. The founding fathers—a phrase I think you must have given the English language since in England things are not founded, but like Topsy,² just grow—recognised that the well-being of the individual and other social factors were crucial to the health of the Community. The concern of the Treaty was for people as well as for commerce.³ For example, one of the “tasks” spelled out in Article 2 of the Treaty was to promote “an accelerated raising of the standard of living” of the peoples of the Community, and one of its “activities” was to abolish obstacles to freedom of movement for persons and services. Another activity was to create a European Social Fund to improve employment opportunities for workers and to contribute to the raising of their standard of living. The aim of these and related provisions was both to improve social conditions and to work towards their harmonisation throughout the Member States.

A. EQUAL PAY FOR EQUAL WORK

One positive decision taken during the initial stage of the Community’s establishment was that men and women must receive equal pay for equal work. To you in this room nearly thirty years later, that may not sound like a very dramatic step. But in the social and labour conditions existing in some if not all of the Member States this was a significant development.

The implementation of the principle of equal pay for equal work was not left merely to the Member States to do in their own way at their own time. The European Court of Justice, having established that Community law is an autonomous system of law that is supreme and overrides national laws when the two conflict,⁴ firmly ruled that this provision is so clear and precise that it is a part of the Community law that should be enforced by national courts without supplemental

1. Treaty Establishing the European Economic Community, *done* Mar. 25, 1957, 298 U.N.T.S. 3 [hereinafter cited as EEC Treaty].

2. See H.B. STOWE, *UNCLE TOM’S CABIN*, ch. 20, at 228 (Airmont ed. 1967).

3. One very important illustration is Article 177. Article 177 allows national courts, in litigation involving private citizens, to make references to the European Court of Justice so that private citizens may also have the benefit of the Court’s interpretation of Community provisions. For example, see the discussion of the *Luisi* case *infra* pp. 29-30.

4. This fundamental Community principle was not provided for in the Treaty but was promulgated by the Court.

national legislation. In the language of Community lawyers, it is a provision that has "direct effect." The Court construed "pay" broadly to include private pension scheme contributions paid by an employer for the benefit of his workers.⁵ Pay also included free rail transportation given during or after employment.⁶

A subsequent Community Directive mandated that men and women must receive equal treatment with respect to equal work, i.e., work that is broadly similar or work of equal value. The importance of this provision can be seen in a recent case in which the Court held that the provisions of the United Kingdom's 1975 Equal Pay Act were not in compliance with Community law.⁷ The Act provided that a job classification system was the only means for determining the attribution of equal value to different work. Furthermore, the Act did not permit the introduction of a classification system without the employer's consent. The Court held that under the Directive a job classification scheme was merely one of several methods for determining work to which equal value could be attributed. Therefore, the Act had to be amended to guarantee equal pay for equal work to workers whose employers refused to introduce a classification system.

Directives that provide for equal access to employment and equal opportunities for promotion are now in force. For example, in a case where sex discrimination against a woman was clearly shown, German law merely gave nominal damages, two marks. The Court held that, although it is for the national authorities to give effect to this Directive because it is not in such clear and precise language that it can be relied on directly in the national courts, the national authorities must make sure that national law provides a significant sanction to prevent discrimination. The choice of sanctions, however, is for the national authority.⁸ There is no Community rule that a person refused a job on the grounds of sex must be given a job. But if damages are the remedy, they must adequately compensate for the loss of the opportunity. It is not sufficient merely to award the amount of expenses incurred in applying and, for example, attending the interview.

The applicant does not, however, always win. In a recent case, for example, the Court was asked to rule that sex discrimination arises when a mother is allowed paid leave from the end of the second month after a child is born to the end of the sixth month but the father is

5. Case 69/80 *Worringham v. Lloyds Bank Ltd.*, 1981 E.C.R. 767, 31 Comm. Mkt. L. R. 1 (1981).

6. Case 12/81 *Garland v. British Rail Engineering Ltd.*, 1982 E.C.R. 359, 33 Comm. Mkt. L. R. 696 (1982).

7. Case 61/81 *Commission v. United Kingdom*, 1982 E.C.R. 2601, 35 Comm. Mkt. L. R. 284 (1982).

8. Case 14/83 *Von Colson v. Nordrhein-Westfalen* and Case 79/83 *Herz v. Neutsche Tradex* (Apr. 10, 1984).

not.⁹ A father had taken off the four months between the end of the second month and the end of the sixth month while the mother worked. He claimed statutory pay on the basis that the parents could arrange between them which of them should stay at home to look after the child. The Commission supported his claim. The Court, however, held that even though the provision was in part for the protection of the child, the provision was primarily for the protection of the mother's health and therefore was excluded from the sex equality provisions. There is no compulsory paid paternity leave in the Community.

The equality provisions, while important, are limited because they do no more than require equal pay. They do not provide for equality in other matters such as mandatory retirement age. Nor do they deal with all rights under national social security law. Other Community legislation will treat these matters.

B. SOCIAL LAW PROVISIONS

The Treaty gave to the Commission the task of promoting close cooperation of Member States in the social field, particularly in employment, labour law and working conditions, social security, and the right of association.¹⁰ Directives have been made under these provisions, but progress is uneven, and much remains to be done. Despite the many cases that the Court of Justice has decided in the social law field, it is plain that the main initiative and responsibility currently lie with national governments. With so many divergent rules among Member States, however, it remains difficult to reach unanimous agreement on the harmonisation of laws. This is true despite the work of international bodies like the International Labour Organisation.

Nevertheless, the framework is there, with a Commissioner specifically responsible for social and particularly labour-related policies of the Community. In a time of recession this is of singular importance. Moreover, the European Social Fund increases the geographical and occupational mobility of workers. The Fund can be used to give temporary aid to unemployed workers until they obtain other employment. In addition, state organisations may receive public funds to assist the re-employment and resettlement allowances.

Directives have required that an enterprise taking over the undertaking of another enterprise re-employ the workers in that undertaking. Although this may sound like a simple principle, it is difficult to apply. For example, must the purchaser of a bankrupt business rehire

9. Case 184/83 *Hoffman v. Barmer Ersatzkasse* (July 12, 1984).

10. See, e.g., EEC Treaty, arts. 117-130.

the employees or assume their labor contracts?¹¹ The need to protect the workers must be balanced against the desire to encourage purchase of the business by not imposing on the purchaser the burdens of taking on more workers than he can afford. The task is made no easier by the differing concepts of bankruptcy and liquidation that exist between the different legal systems.

The case law of the Court is progressively developing in the areas of freedom of movement of workers and services, the right of establishment of a business, and matters of social security that have been dealt with by legislation.

The cornerstone of the EEC's social policy is the requirement that discrimination based on nationality between workers of the Member States in employment, remuneration, and employment conditions be abolished. Workers have the right, subject to limitations justified on grounds of public policy, public security, or public health, to accept offers of employment and to move about freely within the territory of Member States for the purpose of employment. Workers may stay in a Member State for the purpose of employment on the same conditions as nationals of that state and, after having been employed, on conditions laid down by the Community.¹² These basic rules have been elaborated by a series of directives that prohibit discrimination against non-nationals in such areas as taxation and social security benefits. Directives also enable a worker to bring his spouse and family with him as of right and to move by merely producing an identity card or passport as well as to receive a residence permit.¹³

The Court has not yet had to decide the precise meaning of "spouse,"—whether it is limited to persons who have gone through a ceremony recognised by the law or whether people living together as man and wife are included. Equally, the scope of the provisions that define who are dependants living under the same roof may one day have to be elaborated.

The Court has already recognised that the residence permit is not the legal basis of the right of a worker to stay in a country other than his own. His right to stay comes directly from the Treaty. The permit is solely evidence of the fact that he has exercised that right. The

11. This was an issue in four cases that the Court recently decided. See Case 19/83 *Wendelboe e.a. v. LJ Music Aps in Liquidation*; Case 135/83 *Abels v. Administrative Bd. of the Bedrijfsvereniging voor de Metaalindustrie en de Electrotechnische Industrie*; Case 179/83 *Industriebond & Federatie Nederlandse Vakbeweging v. Netherlands*; Case 186/83 *Botzen e.a. v. Rotterdamsche Droogdok Maatschappij*. Judgments in these four cases were delivered on February 7, 1985.

12. EEC Treaty, art. 48(3).

13. The right to receive a residence permit includes the right not to be excluded on the grounds of public policy or public security other than in respect to one's personal conduct. Criminal conviction, however, is not in itself a ground for exclusion.

Court has gone far to insist on this. Accordingly, if a worker fails to complete the necessary formalities or to report his presence, he may be subject to a financial penalty, but he cannot be expelled from the country. Nor must he apply for permission to enter. The Court's decisions all spring from the recognition that the Treaty gives workers the right to reside in another Member State in the interests of creating a mobile labour force within the Community.¹⁴

Despite these decisions, the provisions of the Treaty do not simply give a right to EEC nationals to move about and take up residence in the Community. We are a long way from that. The right is given only to "workers" of a Member State.¹⁵ It is limited to those who are employed by others under what English law would call a "contract of service." That the right does not extend to an independent contractor or a self-employed person seems clear from the existence of a separate right given to those who seek to provide services or to set up a business.¹⁶ But what is "a worker" and what constitutes "employment" may vary from legal system to legal system. The Court has, in the interests of Community integration, made it clear that these words must be construed in a Community context and by Community criteria in order that there be a common test for establishing these rights. The Court has not yet, however, had to refine the tests so as to distinguish between workers and those who provide services. The Court will probably one day have to do so, however, in light of the different tests adopted in the various Member States.

Some national courts have made an attempt to limit Community rights of freedom of movement to those who work full time, regularly, and with a sufficient degree of industry. For example, an English court refused "worker" status to a young Sardinian on the ground that he had "lived the life of an itinerant vagrant, leaving Sardinia and wandering across Europe and that the only work he has done has been some casual work of the washing-up-in-restaurants type."¹⁷ And a German court refused to recognize as a worker a person whom it described as "a mere idle layabout".¹⁸

Although there may be extreme cases when limiting the definition of "worker" is justified, this approach should not be taken too far. The Court has given some guidance as to who may be a worker. In

14. See, e.g., Case 118/75 *State v. Watson*, 1976 E.C.R. 1185, 18 Comm. Mkt. L. R. 552 (1976); Case 167/73 *Commission v. France*, 1974 E.C.R. 359, 14 Comm. Mkt. L. R. 216 (1974); *Regina v. Pieck*, 1980 E.C.R. 2171, 29 Comm. Mkt. L. R. 220 (1980).

15. EEC Treaty, art. 48.

16. See EEC Treaty, art. 52.

17. *Regina v. Secchi*, 15 Comm. Mkt. L. R. 383 (1975) (Metropolitan Magistrate, Marylebone, Mar. 25, 1974).

18. Judgment of Nov. 14, 1966, *Landgericht, Wiesbaden*, W. Ger., 7 Comm. Mkt. L. R. 239 (1968).

one case the Court declared that a sports player can claim rights as a worker only in so far as the games that he plays are regarded as an economic activity.¹⁹ For example, a professional pacemaker in cycle races may be a worker,²⁰ but the part-time footballer is probably not. Of wider import was a ruling that concerned a British woman with some independent means who worked for a few hours a day at a wage below what the Dutch Government regarded as the necessary subsistence level.²¹ The Dutch Government sought to exclude her from the exercise of rights under the Treaty on the basis that she was merely doing nominal work in order to obtain the rights to have her husband, a South African national, accompany her to the Netherlands.

The Court rejected these arguments, holding that "worker" can include part-time workers, even those who earn less than subsistence level, so long as they occupy real and effective part-time employment. As long as they do so, their other reasons for wishing to enter the Community are irrelevant. This case caused concern in some other countries that a large number of wives might exploit Community law by working part time in order to bring in husbands of other nationalities, thereby avoiding difficulties or even quotas under their national law. The Court's decision in my view was of considerable importance in preventing Member States from applying the rules too restrictively.

If, however, a person wants to get a job in a particular country, the best way is often to live in that country and then to start looking. A right to move about the Community to look for employment would seem likely to make a substantial contribution to a free labour market economy, despite the risk that people might use such a right as an excuse to set up home in another Member State without the necessary means and without a real intention to look for work. The express provisions of the Treaty, taken literally, suggest that there is no such right. The right given is to take up offers of employment actually made and to move freely for such purpose, i.e., for accepting such offers and no doubt for carrying out the jobs accepted. *Obiter dicta* of the Court and one Advocate General suggest, however, that such a right may exist.²² And the Council decided in a resolution, which has no binding legal force, that persons should be permitted to enter a Member State other than their own for a period of three months to

19. Case 13/76 Doná v. Mantero, 1976 E.C.R. 1333, 18 Comm. Mkt. L. R. 578 (1976).

20. Case 36/74 Walrave v. Association Union Cycliste Internationale, 1974 E.C.R. 1405, 15 Comm. Mkt. L. R. 320 (1975).

21. Case 53/81 Levin v. Secretary of State for Justice, 1982 E.C.R. 1035, 34 Comm. Mkt. L. R. 454 (1982).

22. *Id.*; see Case 48/75 Royer, 1976 E.C.R. 497, 18 Comm. Mkt. L. R. 619 (1976); Case 118/75 State v. Watson, 1976 E.C.R. 1185, 1204, 18 Comm. Mkt. L. R. 552 (1976) (Opinion of the Advocate General).

look for employment.²³ This is a difficult area in which rights, if they are to exist, should be precisely defined by regulation, rather than deduced by the Court as a matter of interpretation. So far the question has not had to be faced. If it does arise, it seems likely that the Court will deduce some narrowly defined right from the economic and social aims of the Treaty rather than deny the right on the basis of the literal wording of the relevant provisions of the Treaty.

C. NATIONALS' ACTIONS AGAINST THEIR OWN MEMBER STATES

Free movement of goods does not depend on the national origin of the goods or on the nationality of the owner. Free movement of workers, however, seems clearly to be limited to the nationals of Member States despite the fact that, unlike the terms of the Coal and Steel Treaty, the basic provision is simply that "freedom of movement for workers shall be secured within the Community." The provisions prohibiting discrimination are plainly limited to workers who are nationals of Member States. Unlike the term "worker," which is to be defined as a matter of Community law, it seems clear that in accordance with the general rule of international law, it is for the Member States to decide as a matter of domestic law who are their nationals. That leads directly to the question whether a national of a Member State can exercise his Community rights against his own Member State, whatever may be his rights of entry under domestic or public international law. This query arises in part from the fact that self-employed persons and those setting up businesses have rights of establishment only in the territory of another Member State.

It seems to me that a worker can assert Community law rights against his own Member State in situations in which Community law controls. He cannot, however, rely on the rights given to workers by the EEC in a purely domestic situation. For example, although a worker who has taken up employment in another Member State can claim complementary rights to have his family with him as a matter of Community law, a worker who has never lived or worked outside his own state cannot claim these rights as a matter of Community law in defiance of his national law. This issue arose in a case in which a Dutchman who had never moved outside Holland sought to bring his mother-in-law from Surinam to live in the Netherlands.²⁴ Because of the provisions that were adopted when Surinam became an independent state, the mother-in-law lost her rights to Dutch nationality and to residence in Holland. The Court rejected the son-in-law's attempt to

23. Minutes of Discussion on Directive 63/360 (1963).

24. Cases 35-36/82 *Morson v. Netherlands*, 1982 E.C.R. 3723, 37 Comm. Mkt. L. R. 221 (1983).

bring her in under Community law, because he had never exercised his own Community-law right to take up employment outside Holland as a worker. Similarly, a German member of the Communist Party, which like extreme right-wing parties is proscribed in the Federal Republic, claimed that he was discriminated against when he was prevented from completing the second stage of a teacher training qualification. The Court rejected the argument that this meant that he could never qualify in Germany and could therefore never seek employment in another Member State as a teacher. At the time he had not exercised any Community-law right or sought to do so, and thus the alleged discrimination against him was entirely a matter of German domestic law.²⁵ Similarly, a Community national's spouse who is not a Community national may have no rights under Community law to enter her husband's country if he has not moved from that country. This is so even if the non-Community national spouse of a migrant Member State worker could join her husband in the country to which he has moved. However, when a national of one Member State has qualified as a worker under Community law in another Member State and has returned to his own country, he may be able to assert Community law rights against his own country. Similar rights may also exist for workers who spend certain seasons of the year working in other countries of the Community or who live near a frontier and work in the adjacent country or countries.

D. FREEDOM OF ESTABLISHMENT FOR PROFESSIONAL OCCUPATIONS

Parallel but necessarily different provisions are made for those who wish to set up businesses or professional practices in other Member States. They must be allowed to do so on the same terms as apply to nationals within the host state, subject to restrictions justified on the grounds of public order, public security, or public health.²⁶ Many complex factors have to be taken into account for which the Treaty could not possibly have legislated. Instead, the Treaty required the Institutions to draw up programmes that gave effect to this right by removing restrictive rules and practices and gave priority treatment to those activities in which freedom of establishment makes a particularly valuable contribution to the development of production and trade. The question of permissible restrictions is particularly sensitive when one considers professional occupations. The content of university degrees and professional diploma syllabuses may vary widely, and standards in some subjects may be very different. Accordingly, the

25. Case 180/83 Moser v. Baden-Wuerttemberg, 41 Comm. Mkt. L. R. 720 (1984).

26. E.E.C. Treaty, arts. 52, 58.

Institutions were required to issue Directives for the mutual recognition of diplomas, certificates, and other evidence of formal qualification.

Many Directives have been issued to facilitate the freedom of establishment, from agriculture to real estate. Less progress has been made, however, in the mutual recognition of qualifications. The earliest steps were taken with regard to the medical profession, which is perhaps the easiest area because the human body and illnesses are much the same throughout the Community. Directives have laid down rules of professional conduct so that doctors moving from one country to another could not escape the disciplinary control of professional bodies. Similar provisions have been adopted for dentists, veterinary surgeons, and nurses, and drafts have been prepared for pharmacists and engineers.

The welding together of Europe psychologically, to use a perhaps inaccurate term, is a difficult task. The freedom of professionals to move about is an important factor in the welding process. But if qualifications are to be mutually recognised, it is very important, as I stressed in a recent Opinion, that university syllabuses be required to contain aspects of subjects prescribed by the EEC, even if such subjects have different names and classifications among Member States.²⁷ In that case the question was whether the syllabus prescribed by the Italian Government for medical schools contained two subjects that were obligatory under the Community directive. If they were not included, the Italian Government would need to take steps to ensure that the requirements of the Directive were met.

The rules facilitating the movement of professionals are already having their effect. For example, a Dutchman who took a Belgian medical degree that satisfied the terms of the Directive went back to Holland intending to practise medicine. He was told that he could not do so unless he studied general medicine for another year, as Dutch medical students were required to do. The Court held this to be an unlawful requirement.²⁸ Having exercised his right to move as a doctor qualified in Belgium, which also complied with European standards, he was entitled to practise at home. More recently, a veterinary surgeon who was qualified in Italy was prosecuted for practising in France. The first time he was prosecuted, the relevant Directive had not come into force, and the power to prosecute was upheld. After the Directive requiring recognition of diplomas had come into force, he was prosecuted again by the French authorities, and on this occasion

27. Case 221/83 *Commission v. Italy* (Sept. 5, 1984).

28. Case 246/80 *Broekmeulen v. Huisarts Registratie Commissie*, 1981 E.C.R. 2311, 33 Comm. Mkt. L. R. 91 (1982).

the prosecution was held to be invalid.²⁹

The *corpus juris*, however, varies more widely than the *corpus humanis*. The legal profession, therefore, differs greatly throughout the Member States. For example, our English division into barristers and solicitors finds no real parallel in other Member States. Accordingly, although rules have been laid down to enable lawyers to provide services in other Member States—for example, to appear in court and to give advice—there is no set of rules dealing with the right of establishment of lawyers. There have, however, been a number of important cases concerning lawyers. In one case, the Court emphasised the Community-law rule of equal treatment and nondiscrimination on the basis of nationality.³⁰ A Dutchman with a Belgian qualification was excluded from practising in Belgium because he was Dutch. The Court held that even though specific measures had not been adopted to spell out rights of establishment for lawyers, they could rely on the Treaty provisions that confer a right of establishment and abolish discrimination. These provisions have direct effect and are enforceable in the national courts. The Dutch lawyer succeeded in his claim to practise before the Belgian courts.

The Paris Bar has been involved in two cases. In one it refused to admit a Belgian not because he was of Belgian nationality, but because he had a Belgian and not a French law diploma.³¹ The Bar argued that he had no rights in Community law pending the Community's adoption of precise rules to define the mutual recognition of diplomas. The Court rejected this argument. The man had a Belgian doctorate, which was recognised as the equivalent of a French doctorate in law, and he had a qualifying certificate from the Paris Bar. Accordingly, he could not be denied admission to the Paris Bar by the restrictive requirement that he must have a French degree.

More recently, the Court gave judgment perhaps of a more sensitive kind.³² In France an advocate may not have more than one principal establishment, by and large, although he may argue in courts elsewhere, advise clients elsewhere, and even operate subsidiary offices through assistants. For example, you cannot be a member of the Bor-

29. Case 136/78 *Ministere Public v. Auer*, 1979 E.C.R. 437, 25 Comm. Mkt. L. R. 373 (1979).

30. Case 2/74 *Reyners v. Belgian State*, 1974 E.C.R. 631, 14 Comm. Mkt. L. R. 305 (1974).

31. Case 71/76 *Thieffry v. Conseil de l'ordre des avocats a la Cour de Paris*, 1977 E.C.R. 765, 20 Comm. Mkt. L. R. 373 (1977). See also Case 65/77 *Jean Razanatsimba*, 1977 E.C.R. 2229, 21 Comm. Mkt. L. R. 246 (1978); Case 11/77 *Patrich v. Ministre des Affaires Culturelles*, 1977 E.C.R. 1199, 20 Comm. Mkt. L. R. 523 (1977) (reaching a similar result with respect to the refusal of French authorities to allow a British architect, with suitable and equivalent qualifications, to practise in France).

32. Case 107/83 *Klopp v. Order of Advocates* (July 12, 1984).

deaux Bar and the Paris Bar with main offices in both towns. One reason for this is that a French judge has tight command of the procedures in a case, and he must be able to communicate on short notice with the lawyer, who must have his main office within reach of the courts of the area. However, some other nationals, particularly Americans, have been admitted to the Paris Bar. In this case, a young German lawyer with a practice and an office in Düsseldorf received a French doctorate, had passed the Paris Bar examinations, and was of unimpeachable reputation. He was refused admission to the Paris Bar on the ground that he wanted to have an office in Paris whilst retaining his office in Germany. Although the Court was conscious of the internal rules of and problems among the various French bars, it ruled that this restriction on a lawyer in another Member State was inconsistent with Community law. It is of comfort to observe that the Paris Court of Appeal had come to the same conclusion.

There may, of course, be situations in which qualifications are not equivalent, so that Member States can impose additional requirements. The same is true of the right conferred on a Community national who is established in one Member State to provide services in another Member State. The difference between establishment and providing services is that in the former the base is set up in the second country, while in the latter the base remains in the owner's own country and services are provided elsewhere. The dividing line, however, is not always very clear.

Domestic conditions are such that a license issued in one country may not be wholly appropriate in another. For example, when an employment agency licensed in England sought to provide casual labour for building workers in Holland, it was held that so far as English conditions had been fulfilled, the English license was sufficient.³³ However, in view of the particular difficulties existing in Holland, which justified imposition of further conditions, the Court stated that it was necessary for anyone providing the services to satisfy the conditions, as long as they did not discriminate on the basis of nationality.³⁴

The principles adopted in these and other areas are common, and it is important not to keep the various rules in watertight compartments. Two recent decisions illustrate the link between purely economic considerations and the rights of the individual.

In the first case the accused were charged before the Italian courts with exporting quantities of foreign currency above the maxima allowed by Italian legislation.³⁵ They claimed to have used this cur-

33. Case 279/80 Webb, 1981 E.C.R. 3305.

34. *Id.* at 3307.

35. Cases 286/82 and 26/83 *Luisi v. Ministero del Tesoro* (Jan. 31, 1984).

rency in other Member States, where they went for tourism and medical care. The national court trying the case asked the Court whether the laws in question were compatible with the Treaty provisions and Directives concerning the free movement of capital. In particular, the Court was asked whether the laws were valid under Article 106(1) of the Treaty, which obliges Member States to authorise payments connected with the movement of goods, services, and capital in the currency of the Member States where the creditor or beneficiary resides.³⁶

The first question that arose was whether the ability to export currency constitutes services, since it is not considered goods or capital. The Court's answer was that it does. The Treaty, however, only speaks of the freedom to provide services in another Member State. The Court, however, held that the right extends also to persons who wish to receive services. Thus, restrictions must not be imposed either by the host state, where the tourist goes, or by his own state, which he wishes to leave. The same applies to a citizen who wishes to travel to another country to receive medical care or education or to do business. This part of the decision, which will no doubt excite the interest of commentators, illustrates well how the Court applies Treaty rules in order to achieve the fundamental objectives of the Community.

The second question in the case was how to reconcile the obligation to allow payments in foreign currency for tourism, medical care, study, and business travel with the entitlement of a Member State to prevent flights of capital. In a Solomon-like judgment, the Court ruled that current payments with respect to services could not lawfully be subjected to absolute maxima. A Member State could, however, fix ceilings below which currency could be exported as a right, as long as it left open the possibility of freeing additional currency when shown to be needed to pay for services.

The second case demonstrates the way in which Community law at times must be considered in the application of national criminal law.³⁷ The Court has frequently held that a citizen cannot be prosecuted for an offence under national legislation that has been left in force in breach of a Community obligation to abolish it. In this case, an Italian who resided in Germany was charged with attempting to bring Deutschmarks in banknotes to Italy without obtaining the authorisation prescribed by Italian exchange control legislation. He claimed that he had brought the money from Germany into Italy to buy machinery that he needed for his business in Germany. This was an offence under the Italian law, which provided that non-residents

36. Article 106(1) also provides that the Member States will undertake to liberalise additional payments if their economic situation and balance of payments permit.

37. Case 203/80 Criminal Proceedings Against Guerrino Caschi, 1981 E.C.R. 2595, 33 Comm. Mkt. L. R. 365 (1982).

could re-export currency imported into Italy only if they followed prescribed procedures, which the man had not done. The Court held that the freedom of movement of capital did not prevent a state from forbidding the export of banknotes. Moreover, the Treaty required current payments to be liberalised only insofar as was necessary for the free movement of goods. Because payment in banknotes was not standard commercial practice, a Member State was not obliged to allow payments in banknotes as opposed to more conventional commercial ways.

E. ISSUES OF SOCIAL SECURITY

Social security is of interest to all in a modern society. To some it is the main point of contact with government. In the European Community, social security remains largely a question for the Member States. An exception to this is the regulation that implements the requirement of equal treatment in employment between men and women. There is to be equality of access, contributions, and benefits, but such things as survivors' benefits and family benefits are left out of the EEC framework, and the determination of pensionable age is left for the Member States to determine.

In the context of the Community as a whole, the Treaty is principally concerned with the adoption of social security measures that are necessary to provide freedom of movement of workers. For migrant workers and their dependents, it is essential, if they are not to be penalised for moving, that they be able to tote up the periods of insurable employment that they have completed in various Member States. These periods should be taken into account when the right to the benefit and the amount of the benefit depend on specified completed periods of employment. The aim is thus not to replace national social security schemes, although this would be a desirable long-term aim for a wholly free social and economic market, but rather to coordinate and, if need be, to supplement them for the benefit of workers who have moved about. Workers have of course always moved about, and a plethora of bilateral and multilateral national agreements has developed to take care of them. The Community's aim is principally to replace and synchronise these national agreements.

Community social security regulations are despairingly complex in their effort to treat not only migrant and frontier workers but also the many types of social security benefits that now exist, for example, unemployment, family, sickness and maternity, death and survivors' rights, and industrial injury and professional diseases. Highly technical rules show how pensions are to be borne by the Member States. Calculation of pensions is especially difficult when a period of work in

a job that justifies a pension for a shorter working life, such as coal-mining, is taken into account with periods worked in agriculture or industries where the worker must work longer to qualify for a pension. By and large, Community legislation produces results beneficial to the worker. If it does not and he would do better by relying on national rules, then, as the Court has ruled, he must not be deprived of the higher national pension.³⁸ Conversely, the worker is not entitled to collect overlapping benefits, that is, to make unjustified gains by being paid twice. However, even when this rule is observed, the migrant may still do better because he has moved about more than the man or woman who stayed put. This is an almost inevitable result of the fact that national social security systems have not been harmonised.

F. HUMAN RIGHTS

No sketch of the individual in the Community would be complete without a reference to questions of fundamental human rights. Some countries in the Community, such as Germany, have basic or fundamental laws reminiscent of some of the provisions of your Constitution and its amendments. In the United Kingdom we have no bill of rights. Whether we should have one is highly controversial. All members of the Community are, however, parties to the European Convention on Human Rights, which is administered by the Council of Europe. Many states other than members of the European Community have also signed the Convention. This Convention is part of the national law of some Member States but not part of English domestic law. The Community is not a party to the Convention, because it is not a state. Whether it should be made possible for the Community to join and whether it should join are much-debated issues.

The Human Rights Convention is not, however, without its effect in Community law. As I have already shown, the European Court has spelled out general, though unwritten, principles of law that are to be applied in national courts because they are accepted as fundamental throughout the Community. In this way the Court has come to recognise, in principle, guarantees of fundamental individual rights that are found in the constitutions of some of the Member States. This has been difficult to do. The Court began a conflict when it rejected the notion that Community law should be held inapplicable if it conflicts with the German fundamental law. This produced a vigorous reaction from the German and Italian constitutional courts. Why should their citizens yield to Community measures that fly in the teeth of basic concepts adopted in their own countries? Later, however, the Court recognised that some rules were so firmly entrenched in the

38. Case 24/75 *Petroni v. ONPTS*, 1975 E.C.R. 1149.

Member States they could indeed be adopted as part of Community law. They were not followed as national rules, but as expressions of a general principle of law that ought to be taken into account when applying the Treaty. As one President of the Court put it:

There is complete agreement that when the Court interprets or supplements Community law on a comparable basis, it is not obliged to take the minimum which the national solutions have in common or their arithmetic mean or the solution produced by the majority of the legal systems which is the basis for its decision. The Court has to weigh up and evaluate a particular problem and search for the best and most appropriate solution.³⁹

For example, a German who was entitled to subsidised butter under Community social security legislation claimed that requiring him to give his name and address on a coupon presented to the shopkeeper was a breach of his privacy. The Court found that the coupon did not in fact oblige him to give his name and address.⁴⁰ But the Court recognised that unwritten laws embodying fundamental human rights must be protected in the Community. Thus, although Community law must prevail over national laws, these laws and national traditions may inspire Community principles of human rights. The Court went on to say that international treaties to which the Member States are parties or on which they have collaborated could supply guidelines to be followed within the framework of Community law.⁴¹

In 1979 the Court made its first express reference to the European Convention on Human Rights, providing an important indication of the Convention's status under Community law.⁴² In many of the cases that have come before the Court, no violation has been established. Yet the Court has recognised the existence of rights falling within the Convention. These include a right to own and to use property under Article 1 of the joint Protocol,⁴³ a right not to be discriminated against on the basis of religious belief under Article 9,⁴⁴ a right to privacy under Article 8, and a right to a fair hearing under Article 6(1).⁴⁵ Moreover, the Court has held that restrictions on the ground of public safety or national security can be justified only to the extent that they are necessary for the protection of those interested in a democratic society.

39. Case 155/79 *AMTS Europe Ltd. v. Commission*, 1982 E.C.R. 1575, 34 Comm. Mkt. L. R. 264 (1982).

40. Case 29/69 *Stauder v. City of Ulm*, 1969 E.C.R. 419, 9 Comm. Mkt. L. R. 112 (1970).

41. Case 4/73 *Nold v. Commission*, 1974 E.C.R. 491, 14 Comm. Mkt. L. R. 338 (1974).

42. Case 44/79 *Hauer v. Land Rhineland-Pfalz*, 1979 E.C.R. 3727, 29 Comm. Mkt. L. R. 42 (1980).

43. *Id.*

44. Case 130/75 *Prais v. Council*, 1976 E.C.R. 1589, 18 Comm. Mkt. L. R. 708 (1976).

45. Case 136/79 *National Panasonic UK) Ltd. v. Commission*, 1980 E.C.R. 2033, 29 Comm. Mkt. L. R. 169 (1980).

In one case, an Italian who had lived all his life in France and who was married to a French woman was active in trade union affairs.⁴⁶ As a result of his political activities, the French authorities ordered his deportation. He was not, however, removed from France. Instead, he was ordered to live in a different part of France, away from his home and the area of his activities. He complained that the order violated his right to free movement under the Treaty. The Court held that public policy cannot be relied on as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement of workers. Accordingly, restrictions on free movement may be imposed only if there is a serious threat and if the threat comes from the individual's specific circumstances, not considerations of a general nature. The restriction in that case was held to be unacceptable.

In a very recent case, a Danish fishing captain was prosecuted under an English law for fishing in English waters.⁴⁷ The regulation was invalid under Community law when it was made, but it was subsequently made valid retroactively. The Court held that the conviction must be set aside.

The principle that penal provisions may not have retroactive effect is one which is common to all the legal orders of the Member States and is enshrined in Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as a fundamental right; it takes its place among the general principles of law whose observance is ensured by the Court of Justice. Consequently, the retroactivity provided for in Article 6(1) of Regulation No. 170/83 cannot be regarded as validating *ex post facto* national measures which impose criminal penalties at the time of the conduct at issue, if those measures are not valid.⁴⁸

It can thus be seen how the Court accepts without argument that certain principles contained in the European Convention are to be treated as part of Community law. Although it cannot be said that the Treaty of Rome creates a bill of rights, it is not fair to say that human rights and fundamental freedoms have nothing to do with the Luxembourg Court. In fact, the Court's protection of fundamental rights is perhaps more flexible than protection would be under the sort of convention on which all the Member States could agree. Moreover, the Court enables human rights to be recognised in constantly changing circumstances and perhaps even extended as needs arise.

What the Court has done is reflected in a 1977 resolution of the Parliament and the Council that recited the principles established by the Court. The resolution stressed the prime importance that the Par-

46. Case 36/75 *Rutili v. Minister for the Interior*, 1975 E.C.R. 1219, 17 Comm. Mkt. L. R. 140 (1976).

47. Case 63/83 *Regina v. Kirk* (July 10, 1984).

48. *Id.*

liament and the Council attach to the protection of fundamental human rights, in particular those derived from the constitutions of the Member States and from the European Convention. The rights are rights that "they respect and will continue to respect."

CONCLUSION

This brief review of the cases illustrates that the European Economic Community is not just concerned with macro-economic policies and with the minutiae of regulating sales of skimmed milk powder and maize. It is just as much concerned with developing a united economic community of which the individual worker can feel himself to be a part and which he feels is aware of his role and his importance.

